

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

UNITED STATES OF AMERICA,  
Petitioner,  
v.  
CADE CORPORATION,  
Respondent.

Case No. [5:16-cv-01996-EJD](#)

**ORDER GRANTING VERIFIED  
PETITION TO ENFORCE INTERNAL  
REVENUE SERVICE SUMMONS**

Re: Dkt. No. 1

This summons enforcement matter arises from an underlying investigation by the Internal Revenue Service (“IRS”) into the tax liabilities of taxpayer Rozann M. Stenshoel-Sousa for unpaid taxes for the 2000, 2001, 2002 and 2003 tax years. Petitioner the United States of America (“the Government”) has filed, and is presently seeking to enforce, an IRS Summons against Respondent, Cade Corporation (“Cade”), Ms. Stenshoel-Sousa’s employer. See Verified Pet. to Enforce Internal Revenue Service Summons (“Pet.”), Dkt. No. 1. The IRS submits that the information sought by the Summons is relevant to assessing and determining Ms. Stenshoel-Sousa’s assets, tax debts, and taxable income, among other things, in conjunction with its ongoing investigation. See Pet. ¶¶ 5, 7.

On November 23, 2015, Revenue Officer Smith served an IRS Summons on Cade at its place of business. Pet. ¶ 6, 10; Resp’t’s Resp. to the Verified Pet. (“Resp.”), ¶ 6, Dkt. No 10. The Summons required Cade’s corporate officers to appear on January 13, 2016 “to give testimony and to bring for examination certain documents and records.” See Pet., Ex. A, Dkt. No. 1-1. On January 8, 2016, Ms. Stenshoel-Sousa filed a Petition to Quash IRS Summons, which was dismissed with prejudice on May 20, 2016. Pet.’s Reply in Support of Verified Pet. (“Reply”) at Exs, C, D, Dkt. Nos. 11-2, 11-3. Despite the dismissal of the Petition to Quash, Cade has thus far

1 failed to comply with the Summons regarding Ms. Stenshoel-Sousa's financial information. As a  
2 result, the Government filed the instant Petition to Enforce the Summons.

3 On May 24, 2016, this Court issued an Order to Show Cause why the Summons should not  
4 be enforced, and on August 25, 2016, the parties appeared before Judge Edward J. Davila for a  
5 hearing on the matter. Dkt. Nos. 3, 12. Cade requests that the Court deny the Petition, or,  
6 alternatively, be given discovery and/or an evidentiary hearing. Resp. at 3. The Government  
7 opposes the request for discovery or an evidentiary hearing, and argues that Respondent "fail[ed]  
8 to raise any facts or evidence of bad faith to rebut Petitioner's *prima facie* case" such that it would  
9 be entitled to discovery or a hearing. Reply at 3.

10 Having reviewed the relevant pleadings and considered the arguments of counsel presented  
11 at the hearing, the court finds, concludes, and orders as follows:

12 1. The summons power is an investigative tool provided by Congress to enable the  
13 IRS to determine and assess all taxes due. 26 U.S.C. § 6201. The IRS is afforded significant  
14 authority to summons information necessary for investigative purposes. 26 U.S.C. § 7602; see  
15 United States v. Jose, 131 F.3d 1325, 1327 (9th Cir. 1997) (en banc). Specifically, the IRS is  
16 authorized to summon "any person having possession, custody, or care of books of account"  
17 relating to a taxpayer, or to summon "any other person" the IRS deems proper to produce  
18 information relevant to an inquiry. 26 U.S.C. § 7602(a)(2); see, e.g., Chen Chi Wang v. United  
19 States, 757 F.2d 1000, 1002 (9th Cir. 1985) (explaining that the IRS is invested with "broad  
20 powers to summon information relevant to determining the liability of any taxpayer."). If the  
21 summoned party refuses to produce the requested information, the government may seek judicial  
22 enforcement of the summons in the district court. 26 U.S.C. § 7604. "The sole purpose of the  
23 enforcement proceeding is to ensure that the IRS has issued the summons for proper purpose and  
24 in good faith." Jose, 131 F.3d at 1329 (citing United States v. Powell, 379 U.S. 48, 57–58 (1964)).

25 2. The IRS bears the initial burden of establishing a "good faith" basis for the  
26 summons by showing that the summons: (1) is issued for a legitimate purpose; (2) seeks  
27 information relevant to the purpose; (3) seeks information not already within the IRS's possession;

and (4) satisfies all of the administrative steps required by the Internal Revenue Code. Powell, 379 U.S. at 57–58; Jose, 131 F.3d at 1327; United States v. Dynavac, Inc., 6 F.3d 1407, 1414 (9th Cir. 1993). The government’s burden in this regard is minimal, and generally may be satisfied by a declaration or affidavit from the investigating agent that the Powell requirements have been met. United States v. Cathcart, 409 F. App’x 74, 75 (9th Cir. 2010); see also United States v. Bell, 57 F. Supp. 2d 898, 906 (N.D. Cal. 1999). However, “[t]he government’s burden, while not great, is also not non-existent,” and if a summons is challenged, “it must be scrutinized by a court to determine whether it seeks information relevant to a legitimate investigative purpose.” United States v. Goldman, 637 F.2d 664, 667-68 (9th Cir.1980).

3. The party opposing enforcement of a summons may do so “on any appropriate grounds,” including failure to satisfy the Powell requirements. Reisman v. Caplin, 375 U.S. 440, 449 (1964). However, once the government establishes a *prima facie* case, a “heavy” burden then falls upon those opposing enforcement to show either an abuse of process or a lack of good faith. United States v. LaSalle Nat’l Bank, 437 U.S. 298, 316 (1978); Jose, 131 F.3d at 1328. “The [party opposing enforcement] must allege specific facts and evidence to support [its] allegations” of bad faith or improper purpose. Jose, 131 F.3d at 1328; (quoting Liberty Fin. Servs. v. United States, 778 F.2d 1390, 1392 (9th Cir. 1985)).

4. As part of a summons enforcement proceeding, the district court also has great discretion to limit or deny requests for discovery and evidentiary hearings. United States v. Stuckey, 646 F.2d 1369, 1373 (9th Cir. 1981); United States v. Church of Scientology of California, 520 F.2d 818, 821 (9th Cir. 1975). Discovery in a summons enforcement proceeding is the exception rather than the rule. Stuckey, 646 F.2d at 1374. While some circuits regularly allow pre-hearing discovery, the Ninth Circuit permits “limited discovery only if the [requesting party] can make a substantial preliminary showing of abuse or wrongdoing.” Id. (quoting Church of Scientology, 520 F.2d at 824). If the allegations by the party opposing enforcement of the summons are sufficient, a limited evidentiary hearing may be conducted. However, the party must be able to provide at least “a minimal amount of evidence” in order to justify an evidentiary

1 hearing. Id. at 1372; see e.g., United States v. Popkin, 623 F.2d 108, 109 (9th Cir. 1980). The  
2 court may then decide if discovery is warranted. Stuckey, 646 F.2d at 1374.

3 5. Here, the Government alleges and submits the following as evidence that the  
4 Summons satisfies the Powell requirements:

5 First, the Summons was issued for the legitimate purpose of aiding in the collection of  
6 unpaid tax liabilities for Ms. Stenshoel-Sousa. See 26 U.S.C. § 7602(a); Pet. ¶¶ 3, 7.

7 Second, the Summons seeks information relevant to that purpose because the Government  
8 believes that Cade is “in possession and control of records, papers and other data regarding income  
9 and other matters covered by [the Officer’s] inquiry,” and which can “reasonably be expected to  
10 assist in the ascertainment and/or collection of tax liabilities of Ms. Stenshoel-Sousa.” Pet. ¶¶ 5,  
11 7. Additionally, Magistrate Judge Beeler’s Report and Recommendation regarding Ms. Stenshoel-  
12 Sousa’s Petition to Quash further found: (1) Cade’s information may be relevant to determining  
13 “assets available to satisfy [Ms. Stenshoel-Sousa’s] tax liability because she apparently owns an  
14 interest in the company;” (2) Cade’s “possible repayment of Ms. Stenshoel-Sousa’s loans or  
15 mortgage is relevant to an evaluation of her overall level of income,” because “discharge of  
16 indebtedness is a form of income;” and (3) the information at issue “is relevant to collection now,  
17 despite the tax liability being assessed for years 2000-03.” Stenshoel-Sousa v. United States, No.  
18 16-MC-80009-LB, 2016 WL 2962891, at \*3 (N.D. Cal. Apr. 7, 2016), report and recommendation  
19 adopted sub nom. Stenshoel - Sousa v. United States, No. 16-MC-80009-JD, 2016 WL 2939072  
20 (N.D. Cal. May 20, 2016); see 26 U.S.C. § 61(a)(12).

21 Third, the IRS affirmatively asserts that the information sought by the Summons is not  
22 already within the IRS’s possession or control. Pet. ¶ 5.

23 And fourth, the IRS states that it has satisfied all of the administrative steps required by the  
24 Internal Revenue Code. Pet. ¶ 11. Specifically, the IRS asserts that it properly served the  
25 Summons upon Respondent at its place of business, and Respondent admits it received service.  
26 Pet. ¶¶ 6, 10; Resp. ¶ 6.

27 6. The Court finds that the IRS has set forth a *prima facie* case satisfying the four  
28

Powell requirements and the burden now shifts to Cade to show an abuse of process or lack of good faith. However, Cade's only argument is that it has "no evidence from which to evaluate the IRS' and/or [Revenue Officer] Joe Smith's purpose, conduct, administrative steps, and more." Resp. at 2. From this, Cade summarily requests that the Petition be dismissed with prejudice. Id. at 3. Although counsel for Cade argued at the hearing on this matter that certain actions taken by the IRS toward Ms. Stenshoel-Sousa are suggestive of bad faith, Cade offered no specific facts or evidence to support such allegations, nor was this argument addressed by Respondent's pleadings. See Liberty, 778 F.2d at 1392. Accordingly, the Court finds that Cade has not presented sufficient evidence of bath faith, nor has it offered facts or argument sufficient to rebut the Government's *prima facie* case.

7. As to Cade's request that it be afforded discovery and/or an evidentiary hearing, the Court finds that Cade has failed to make a preliminary showing of bad faith or allege that enforcement of the summons would likely result in an abuse of the court's process. See Stuckey, 646 F.2d at 1374; Resp. at 2-3. Nor does Cade allege what relevant evidence it anticipates discovery would be likely to uncover in this case. See Resp. at 2-3.

Based on the forgoing, the Court hereby GRANTS the Government's Verified Petition to Enforce the IRS Summons served on Cade Corporation, and DENIES Respondent's request for discovery and/or an evidentiary hearing.

It is FURTHER ORDERED that Respondent is directed to obey the summons issued; to appear before Special Agent Joe Smith, or any other proper officer of the IRS, at such time and place as may hereafter be determined, to give testimony as demanded in the summons.

The Clerk shall close this file.

**IT IS SO ORDERED.**

Dated: August 26, 2016



EDWARD J. DAVILA  
United States District Judge